Supreme Court, U.S.
FILED
APR 14 1998
CLERK

(1)

97-2036

No. _____

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1997

PETER C. ANDRESEN, et al

Petitioner

vs.

MINKOFF COMPANY, INC.

Respondent

On Petition For Writ of Certiorari
To the Court of Special Appeals of Maryland

Peter C. Andresen, Pro Se
Petitioner
6 Post Office Road
Silver Spring, Md 20910
(301) 585-0303

13PP

QUESTION PRESENTED

In a common law suit for damages, where the value in controvery exceeds the amount required, and a timely demand for a jury trial is made by defendant, is that right to a jury trial applicable to a case of the assessment of damages after a default?

LIST OF ALL PARTIES

Minkoff Company, Inc. Plaintiff
Peter C. Andresen, Defendant
Forest Glen Country Store, Inc. (Peter C. Andresen, Trustee and/or assignee) Defendant
Ivanor Corp. (Peter C. Andresen, Trustee and/or assignee) Defendant

CITATIONS OF REPORTS

Circuit Court for Montgomery County, Maryland, Civil Case No. 140766.

Court of Special Appeals of Maryland, No. 382, September Term 1997.

Court of Appeals of Maryland, Petition Docket No. 454, September Term, 1997.

JURISDICTION

The judgment of the Court of Special Appeals of Maryland sought to be reviewed was dated August 26, 1997, and its mandate was issued on October 21, 1997.

A timely petition for writ of certiorari was filed in the Court of Appeals of Maryland, the highest Court of the State, which was denied on January 15, 1998.

The jurisdiction of this Court is invoked under 28. U.S.C. Sec. 1257(3).

CONSTITUTIONAL PROVISION

Constitution of the United States Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

STATEMENT OF THE CASE

A common law suit for damages on contract was brought by Minkoff Company, Inc. against Peter C. Andresen and Forest Glen Country Store, Inc. in the District Court of Maryland, where no jury trials are available. A timely demand for jury trial was made on behalf of both defendants and the case was tranferred to the Circuit Court for Montgomery County, Maryland, for trial. (Appendix, infra page A-1) A default judgment was entered against these two defendants after a discovery dispute. (A-2) An amended complaint added Ivanor Corp. as a third defendant who also demanded a jury trial. Peter C. Andresen and Forest Glen Country Store, Inc. re-iterated their previous jury demand which was denied. (A-2,3) At the hearing on the assessment of damages, defendants were denied their right to a jury trial on the merits as to Ivanor Corp. and on the assessment of damages as to all defendants. The trial court also denied defendants the right to present any evidence whatsoever in mitigation of damages in entering judgment and assessing damages. (A-4,5)

A timely appeal was noted and briefs were timely filed in the Court of Special Appeals of Maryland, again raising the denial of a jury trial. A timely petition for writ of certorari was filed in the Court of Appeals of Maryland, again raising the issue. Both were denied. (A-6,7)

ARGUMENT

Generally, seeking an award for damages will make a trial one at law for a jury. *Wooddell vs Int'l Brotherhood of Electric Workers, Local 71* (1991, US), 116 L. Ed 2nd 419, 112 S. Ct 494, 138 BNA LRRM 2881, 120 CCU LC Sec. 11010.

Only through a holding that the jury-trial right is to be determined according to federal law can the uniformity in its exercise which is demanded by the Seventh Amendment be achieved. *Simler v Conner* (1963) 372 US 221, 9 L ED 2nd 691, 693, 83 S Ct 609.

In this case, a state court of last resort has decided an important federal question in a way that conflicts with the decision of another State Court of Appeals. Also a state court has decided an important question of federal law that has not been, but should be settled by this Court.

It has been held that the Seventh Amendment right applies to the determination of the amount of damages assessed after a default in a United States Court of Appeals. *E.C. Gerhard Bldg. Co. vs City of Dallas*, C.C.A. Tex. 298 F. 264 (1924).

In the case of the assessment of damages after a default, the right to jury trial has been held both applicable and inapplicable in the state courts of last resort.

Holding the right inapplicable were: Illinois in *Polich vs. Glodich*, 142 N.E. 466, 311 Ill. 149 (1924), Utah in *Amica Mutual Ins. Co. vs Schettles, App.*, 768 P. 2d 950 (1989) and Wisconsin in *Welty v. Heggy, App.*, 429 N.W. 2d 546, 145 Wis. 2d. 828, review denied 436 N.W. 2d 29, 147 Wis. 2d 887 (1988).

Holding that the right was applicable were: Georgia in *Willett Lincoln-Mercury v. Larson,* 281 S.E. 2297, 158 Ga. App. 540 (1981) and twice in Texas in *Mackey v Bradley Motors, Inc., App.- Amarillo,* 871 S.W. 2d 243, rehearing overruled, reversed 878 S.W. 2d 140 (1994) and *Brantley v Etter, App. 4 District,* 662 S.W. 2d 752, error refused no reversible error 677 S.W. 2d 503 (1983).

It is argued that the upholding of the right to a jury trial in such a determination is the better rule in order to uphold the Seventh Amendment and the power of the courts to enforce the Bill of Rights.

Respectfully submitted,

Peter C. Andresen, Pro Se
and as Trustee and/or
assignee of
Forest Glen Country Store, Inc.
and Ivanor Corp.,
Pro Se /Petitioner
6 Post Office Road
Silver Spring, MD 20910
(301) 585-0303

APPENDIX

A.1

Molly Q. Ruhl
Clerk of the Circuit Court for Mongtomery County
50 Courthouse Square
Rockville, Maryland 20850-2393

DATE AUGUST 21, 1995

TO: PETER ANDRESEN
6 POST OFFICE ROAD
SILVER SPRING, MD 20910

Re: MINKOFF COMPANY INC v. FOREST GLEN COUNTRY STORE INC. ET AL

This letter is to inform you that on the 17th day of AUGUST, 1995 the Office of the Clerk of the Circuit Court for Montgomery County, upon a Demand for a Jury Trial, received a transfer of Civil Case Number 140766.

You are also hereby notified that a new new complaint must be filed within 30 days pursuant to Section 4-402 of the Annotated Code of Maryland Courts and Judicial Proceedings and Rule 2-326(c) of the Maryland Rules.

/s/ Molly Q. Ruhl
Clerk

CIVIL INFORMATION FOR CASE #140766 AS OF 12/20/96 11:45
MINKOFF COMPANY INC VS FOREST GLEN COUNTRY STORE INC

CONTINUED

* * *

03/07/96 #59 AB
HEARING ON PLAINTIFF'S SECOND MOTION FOR SANCTION (#33) ORDER SIGNED.
TYPE: DOCKET

03/07/96 #60 AB
COURT (CHAPIN, J.) DETERMINES PLAINTIFF'S MOTION TO AMEND COMPLAINT (#34) IS MOOT.
JUDGE: J CHAPIN
TYPE: RULING STATUS: MOOT MOTION: 34
OPPOSITION: 44

* * *

03/07/96 #62 AB
ORDER OF COURT (CHAPIN, J.) THAT THE PLAINTIFF'S MOTION IS GRANTED AND DEFAULT IS ENTERED AGAINST DEFENDANTS FILED. (COPIES MAILED)
JUDGE: J CHAPIN
TYPE: RULING STATUS: GRANTED MOTION: 33
OPPOSITION: 41

03/18/96 #63 DT
DEFENDANTS' MOTION TO AMEND AND NOTICE FOR JURY TRIAL ON THE REMAINING ISSUES IN THIS CASE FILED.
JUDGE: J CHAPIN
TYPE: MOTION STATUS: DENIED OPPOSITION 64
RULING: 69

03/20/96 #64
PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO AMEND THIS COURT'S ORDER OF DISMISSAL AND PLANTIFF'S MOTION TO STRIKE NEW JURY DEMAND FILED.
JUDGE: J CHAPIN
TYPE: OPPOSITION MOTION: 63 RULING: 69

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MINKOFF COMPANY, INC.	:	CIVIL NO. 140766
Plaintiff	:	
v.	:	FILED: April 05, 1996 Clerk of the Circuit Court Montgomery County, Md
FOREST GLEN COUNTRY STORE, INC., et.al	:	
Defendants	:	

ORDER

Upon consideration of Defendants' Motion to Amend Order and Plaintiff's Opposition thereto, and Plaintiff's Motion to Strike Jury Demand and Defenses and any Opposition thereto, and the Court finding that no hearing is necessary and that Defendants' Motion is frivolous and not well-supported and the Court finding further that Defendants may not present any defenses or set-off to the Complaint and may not now pray trial by jury, it is, this 5th day of April, 1996, by the Circuit Court for Montgomery County, Maryland.

ORDERED, that Defendants Motion be, and the same is hereby DENIED, and Plaintiff's Motion to Strike Jury Demand and Defenses is GRANTED, and it is further,

ORDERED, that this matter shall proceed as scheduled to a bench trial on the issue of damages.

/s/ James C. Chapin
JAMES C. CHAPIN, JUDGE

CIVIL INFORMATION FOR CASE #140766 AS OF 11/24/96
11:13 69 CONTINUED
MINKOFF COMPANY INC VS. FOREST GLEN COUNTRY STORE INC

DOCKET INFORMATION

CASE# 140766 CASE TYPE: CIVIL Reference Case: (none)

09/04/96 #94

JUDGMENT EXTENDED ON PROOF IN OPEN COURT AND JUDGMENT ENTERED ON THE JUDGMENT INDEX IN FAVOR OF THE PLAINTIFF MINKOFF COMPANY, INC. AGAINST THE DEFENDANTS FORET GLEN COUNTRY STORE, INC., PETER ANDRESEN AND IVANOR CORPORATION IN THE AMOUNT OF SIXTEEN THOUSAND EIGHT HUNDRED NINETY-SEVEN DOLLARS AND EIGHTY EIGHT CENTS ($16,897.88) PLUS ATTORNEY FEES OF FOUR THOUSAND NINE HUNDRED DOLLARS ($4,900.00) AND COSTS OF SUIT.
TYPE: DOCKET

* * *

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY,
MARYLAND

Minkoff Company, Inc.

vs.

Forest Glen Country Store, Inc.

Peter Andresen

Ivanor Corporation

No. 140766

September 3 Term, 1995

Assessment of Damages

Upon legal and satisfactory proof of the correctness and amount of the claim for which the above writ was brought being produced to the court,

IT IS ORDERED, this 3rd day of Sept. 1996, that the judgment by default in this cause be extended for $16,897.88 etc. and $4,500 damages assessed by the court, and costs of suit.

/s/ Louise Schrivener
Judge of the Circuit Court for
Montgomery County, Maryland

FILED: Sept. 4, 1996
Clerk of the Circuit Court
Montgomery County, Md.

MANDATE
Court of Special Appeals

No. 382, September Term, 1997

Forest Glen Country Store, Inc. et al.

v.

Minkoff Company, Inc.

JUDGMENT: August 26, 1997: Order of this Court, on its own initiative, dismissing the appeal.
Appeal dismissed. Maryland Rule 8-602(a)(8).
September 5, 1997: Motion for Reconsideration of Dismissal filed by appellant Peter C. Andresen
September 5, 1997: Line of dismissal of cross-appeal filed by counsel for the appellee.
September 11, 1997: Appellee's Opposition to Appellant's Motion to Reinstate Appeal filed by counsel.
September 15, 1997: Motion for Reconsideration denied.
September 24, 1997: Motion for Reconsideration filed by appellant.
September 29, 1997: Opposition to Motion for Reconsideration of Dismissal by Counter-Defendant Minkoff Co. filed by counsel.
October 14, 1997: Appellee's Opposition to Appellant's Renewed Motion for Reconsideration and to Reinstate Appeal filed by counsel.
October 17, 1997: Motion for Reconsideration denied.
October 21, 1997: Mandate issued.

* * *

FILED: October 21, 1997

FOREST GLEN COUNTRY STORE, INC. ET AL	:	In the
	:	Court of Appeals
v.	:	of Maryland
	:	Petition Docket No. 454
MINKOFF COMPANY, INC.	:	September Term, 1997
	:	(No. 382, September Term 1997, Court of Special Appeals

ORDER

Upon consideration of the petition for a writ of certiorari and the supplement to the Court of Special Appeals, and the respondent's opposition to petition and request for sanctions to Rule 1-341 filed thereto in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition, supplement and request for sanctions be and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

Date: Jan 15, 1998